IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2005

CORAM

THE HONOURABLE Mr.JUSTICE P.K.MISRA

WRIT PETITION NO.27653 of 2004

N.Neela ... Petitioner

-vs.-

1.The Joint Director,
Higher Secondary School Education,
College Road, Chennai-600 006

2.The Chief Educational Officer,
Panagal Building, Saidapet,
Chennai-600 015

3.The District Education Officer,
North Madras, Chennai-600 007

4.The Secretary,
Tarapore and Loganathan Higher
Secondary School for Girls,
Chennai-600 023 ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the third respondent in Na.Ka.No.3330/AA1.2001 dated 19.2.2004 and quash the same, consequently direct the third respondent to regularise the petitioner since 1968 and to pay her back wages and other service benefits within 3 months with bank interest.

For Petitioner : Mr.P.Solomon
For Respondents 1to3: Mr.S.Gomathynayagam
Special Govt. Pleader

Respondent-4 : Mr.K.Surendranath

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O R D E R

Heard the learned counsels appearing for the parties.

2. The writ petition has been filed for issuance of writ of Certiorarified Mandamus for quashing the records of the third respondent in Na.Ka.No.3330/AA1.2001 dated 19.2.2004 and consequently directing the third respondent to regularise the services of the petitioner since 1968 and to pay the backwages and other service benefits.

3. The petitioner who had studied upto Class-V was appointed to work as part-time Sweeper under the fourth respondent school with effect from 8.8.1966. She was being paid only a consolidated pay by the Government and the Management was also paying some amount. It is stated that the petitioner had represented to the Management on several occasions for regularisation of services, but to no avail. Subsequently, on 29.8.1991, the petitioner made a representation to the Government for regularisation of her services and several other similar representations were made, including a representation dated 21.3.2000. The Management had recommended to the Government on several occasions starting from January, 1992 for regularisation of services of the petitioner as there was a permanent need for the job. Since no positive response had been received, the petitioner had filed W.P.No.10024 of 2000 and the High Court by order dated 9.10.2003 had directed the authorities to dispose of the representation. However, such representation was rejected under the impugned order by the District Educational Officer dated 19.2.2004. The main reason indicated in such order is to the effect that there was ban order of the Government for creation of new post, and, therefore, the prayer for regularisation of services as a full-time sweeper was not acceptable. Thereafter, the present writ petition has been filed.

4. During pendency of such writ petition, the petitioner has retired after putting in 38 years of service in the Government aided school against the so called part-time post, which would not entitle her to receive any retiral or any other benefit.

5. The learned counsel for the petitioner has contended that the petitioner had worked for more than thirty years and the Respondents should have regularised her service.

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6. Learned Special Government Pleader appearing for the respondents has raised two contentions. The first contention is to the effect that as per the norms applicable, a school having less than 1500 students can engage only a sweeper on part-time basis and not on full-time basis. The second contention is to the effect that the petitioner is claiming regularisation from the year 1968, but the writ petition has been filed only in the year 2004 and the writ petition is to be rejected on the ground of delay and laches.

7. So far as the first contention raised by the learned Special Govt. Pleader is concerned, from the chart submitted by the learned Special Govt. Pleader, it is apparent that the students strength during the year 1990-91 was in excess of 1500. Therefore, the petitioner became eligible for appointment on full-time basis at least in the year 1990-91, if not earlier. Apart from making several representations earlier, the petitioner had definitely made a representation on 29.8.1991. In such view of the matter, the petitioner could have been regularised at least with effect from September, 1991.

8. The second submission made by the learned Special Govt. Pleader regarding delay and laches cannot be accepted. There is no dispute that the petitioner is only a semi-literate person belonging to weaker section of the society and was eking out her livelihood on the basis of a part-time job. Therefore, merely because the petitioner could not gather sufficient money or muster, sufficient courage to enter the portals of Courts to file the writ petition earlier, cannot be held against her and the question of invoking of principle of delay and laches does not arise. It is rather surprising that such a technical plea is being taken in the matter relating to regularisation of a lowly paid employee, who had served the school with all sincerity for about 38 years.

9. Having regard to all these aspects, the writ petition is allowed in part with a direction that the petitioner is deemed to have been regularised as a regular sweeper with effect from September, 1991. The petitioner shall be paid regular salary with effect from September, 1991 till the date of her retirement. The amount which was paid to the petitioner as a part-time sweeper during the aforesaid period should be adjusted and the balance amount should be calculated and paid to the petitioner within a period of three months from the date of receipt of a copy of this order. The petitioner shall also be eligible for

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receiving other retiral benefits, including pension, which shall be calculated and paid within the said period of three months and thereafter the regular pension should be paid.

10. Subject to the aforesaid directions, the writ petition is allowed in part. There would be no order as to costs.

Dpk

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Joint Director,
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2.The Chief Educational Officer,
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Chennai-600 015

3.The District Education Officer,
North Madras, Chennai-600 007

4.The Secretary,
Tarapore and Loganathan Higher
Secondary School for Girls,
Chennai-600 023

+ one cc to the G.P. High Court, Madras (sr 39163)

+ one cc to Mr. P. Solomon, Advocate (sr 39302)

NM(05.10.2005)

ORDER IN WP.NO.27653/2004

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